SINGAPORE REPORTS

NG SUI NAM v. BUTTERWORTH & CO. (PUBLISHERS) LTD. & ORS.

[C.A. (Lai Kew Chai & Chua JJ. & Chan Sek Keong J.C.) April 7, 1987]

[Singapore – Civil Appeal No. 13 of 1985]

Copyright – Literary works – Infringement of – Actions for – Scope of Copyright Act 1911 of United Kingdom – Whether copyright protection conferred on all works first published in U.K. or only works first published in Singapore – Repeal of 1911 Act by Copyright Act 1956 – Subsequent extension to Singapore – Singapore in Malaysia – Singapore as independent state – Constitution of Singapore, art. 105(1) – Malaysia Act 1963 of Malaysia, s. 73(1) – Constitution and Malaysia (Singapore Amendment) Act 1965 (Malaysia), s. 7 – Copyright Act (Cap. 187, 1970 Ed.)

Stare decisis – Court of Appeal – When bound by Federal Court.

In this appeal concerning infringement of the copyright of certain original literary works of the respondents, the appellant Ng Sui Nam appealed against the decision ("the main decision") of Thean J., who held in three consolidated suits that the respondent publishers were entitled to copyright protection in Singapore in respect of such original works first published in the United Kingdom during the following periods: (a) before June 1, 1957; (b) January 27, 1959 to June 3, 1959; (c) June 3, 1959, to September 16, 1963; (d) September 16, 1963 to August 9, 1965; and (e) August 9, 1965 to the present. (See [1985] 1 M.L.J. 196). The learned judge also decided ("the single period decision") that such works first published in the United Kingdom during the period from June 1, 1957 to January 26, 1959, were not entitled to copyright protection. In the result, the appellant appealed against the main decision and the respondents cross-appealed against the single period decision. The appellant contended that the said works were not entitled to copyright protection in Singapore in any of the six periods, whereas the respondents contended otherwise. Counsel for the appellant said that the appeal, although arising out of a copyright dispute, involved a point of constitutional law, which is whether and to what extent the Copyright Act 1911 of the United Kingdom ("the 1911 Act") requires reinterpretation and, if so, what it should be, as a result of Singapore becoming an independent State on September 16, 1963.

The 1911 Act came into force in Singapore when it was part of the Straits Settlements on July 1, 1912, pursuant to a proclamation by the Governor. The 1911 Act was repealed in the United Kingdom by the Copyright Act 1956 ("the 1956 Act") on June 1, 1956. The 1956 Act was not extended or applied to Singapore except Paragraph 41 of the Seventh Schedule thereof, which in a modified form was extended to Singapore on January 26, 1959, by the Copyright Act 1956 (Transitional Extension) Order 1959 (S.I. 193 of 1959) ("the 1959 Extension Order"). On September 16, 1963 ("Malaysia Day"), Singapore became independent as a constituent State of the Federation of Malaysia. As part of the constitutional arrangements Singapore was granted a Constitution ("the Constitution of Singapore") by an Order in Council (S.I. No. 1495 of 1963). On August 9, 1965 ("Singapore Day"), Singapore ceased to be a state of Malaysia and became an independent and sovereign republic.

The main decision turned on the meaning of the following (italicized) expression ("the crucial expression") in section 1(1) of the 1911 Act: ". . . copyright shall subsist throughout *parts of His Majesty's dominions to which this Act extends. . .* " The single period decision depended upon the construction of the Seventh Schedule of the 1956 Act. The appellant's case was that, as a consequence of Singapore becoming an independent State, the crucial expression underwent a transformation to refer only to "Singapore." The respondents' contention is that the word "extends" refers to all those countries which (including those which have since 1911 become independent) once constituted parts of His Majesty's dominions to which the 1911 Act extended and in which the 1911 Act has not been repealed. The respondents also contended that Thean J. misconstrued the Seventh Schedule of the 1956 Act.

Held, dismissing the appeal and the cross-appeal: (1) the expression "this Act" in the crucial expression does not and cannot be transformed on Malaysia Day to mean "this Act of the Parliament of Singapore." It meant and continues to mean "this 1911 Act" which is continued by the Consitution of Singapore as part of the law of Singapore. The Court knows of no principle or authority which supports the view that the attainment of independence of a territory, which is a historical fact, *ipso facto* changes the legislative source of its inherited laws, which is another historical fact;

(2) if the expression "this Act" does not mean "this Act of the Parliament of Singapore," then the appellant's contention on the meaning of the word "extends" in the crucial expression also fails;

(3) the crucial expression was intended to (a) include within its ambit not only all British dominions which existed on the date of coming into force of the 1911 Act, including those self-governing dominions which have extended the 1911 Act to themselves, but also all such dominions thereafter, and (b) exclude therefrom all those dominions which should refuse to extend the Act to themselves or which have repealed the Act after it has been extended to them;

(4) it is not incorrect to say that the expression "His Majesty's dominions" has become a mere geographical expression, drained of any political content, so far as concerned Singapore when it became independent. There is no inconsistency between Thean J.'s main decision and his single period decision;

(5) the constitutional enactments providing for Singapore's independence make it clear that all existing laws prior to Malaysia Day shall subsist on and after Malaysia Day, subject only to such modifications as are required to make them conform to the Constitution of Singapore;

(6) the extension of Paragraph 41 to Singapore did not automatically bring with it the operation of Paragraph 39 of the Seventh Schedule of the 1956 Act;

(7) the Court is bound by the decisions of the Federal Court sitting in appeals from the High Court of Singapore in the same way and to the same extent that it is bound by the Court of Appeal of the Straits Settlements.

Cases referred to:

(1) *Performing Right Society* v. *Bray Urban District Council* [1930] A.C. 377.
(2) *Blackwood* v. *Parasuraman* A.I.R. 1959 Mad. 410.
(3) *Public Prosecutor* v. *Wee Boon Chye* [1965] 1 M.L.J. 189.
(4) *de Lasala* v. *de Lasala* [1979] 2 All E.R. 1146.
(5) *Copyright Owners Reproduction Society Ltd.* v. *E.M.I.* (1958) 100 C.L.R. 597.
(6) *Maine and New Brunswick Electrical Power Co.* v. *Hart* [1929] A.C. 631.

COURT OF APPEAL.

Anthony Walton Q.C. (*Chia Quee Khee* and *Kan Ting Chiu* with him) for the appellant/defendant.

Gavin Lightman Q.C. (*Anthony Lee* with him) for the respondents/plaintiffs.

Cur. Adv. Vult.

Chan Sek Keong J.C. (delivering the Judgment of the Court):

INTRODUCTION

In Consolidated Suits No. 1924/81, Suit No. 3913/81 and Suit No. 3914/81 the respondents in this appeal claimed against the appellant, *inter alia,* damages for infringement of the respondents' copyright in certain original literary works. The learned judge, Thean J., held that the respondents were entitled to copyright protection within the Republic of Singapore in respect of such original work first published in the United Kingdom during the following periods:

(a) before June 1, 1957;
(b) January 27, 1959 to June 3, 1959;
(c) June 3, 1959 to September 16, 1963;
(d) September 16, 1963 to August 9, 1965;
(e) August 9, 1965 to the present.

For convenience, this decision is hereafter referred to as "the main decision." He also held that such works first published in the United Kingdom during the period from June 1, 1957 to January 26, 1959 were not entitled to copyright protection. For convenience, this decision is hereafter referred to as "the single period decision".

The appellant is dissatisfied with and has appealed against the main decision. The respondents are dissatisfied with and has sought to reverse the single period decision. The appellant's case is that the said works are not entitled to copyright protection in Singapore in any of the six periods whereas the respondents' case is that they are so entitled in all of them.

This appeal, although arising out of a copyright dispute, is said by counsel for the appellant to involve a point of constitutional law, which is, whether and to what extent the Copyright Act 1911 ("the 1911 Act") requires reinterpretation, if so, what it should be, as a result of Singapore becoming an independent state on September 16, 1963. It is therefore convenient at the outset that we should provide a brief history of copyright legislation in Singapore as well as the constitutional developments leading to the independence of Singapore.

STATUTORY HISTORY

The statutory history is as follows:

(a) the 1911 Act was an Act of the Parliament of the United Kingdom which extended to (i) His Majesty's dominions by its terms; (ii) self-governing dominions by their voluntary acceptance thereof and (iii) protected territories and Cyprus by Order in Council; (iv) foreign works by Order in Council.

(b) the 1911 Act came into force in Singapore when it was part of the Straits Settlements on July 1, 1912 pursuant to a proclamation by Governor.

(c) the 1911 Act was repealed in the United Kingdom by the 1956 Act on June 1, 1956; the 1956 Act was not extended or applied to Singapore except Paragraph 41 of the Seventh Schedule, which in a modified form was extended to Singapore on January 26, 1959 by the Copyright Act, 1956 (Transitional Extension) Order, 1959 (S.I. 103 of 1959) ("the 1959 Extension Order").

(d) on September 16, 1963 (hereinafter called "Malaysia Day"), Singapore became independent as a constituent state of the Federation of Malaysia; as part of the constitutional arrangements Singapore was granted a Constitution ("the Constitution of Singapore") by an Order in Council (S.I. No. 1495 of 1963).

(e) on August 9, 1965 (hereinafter called "Singapore ceased to be a state of Malaysia and became an independent and sovereign republic.

The relevant statutory and constitutional provisions are as follows:

1. *The 1911 Act:*

(a) "1. – (1) Subject to the provisions of this Act, copyright shall subsist throughout the parts of His Majesty's dominions to which this Act extends for the term hereinafter mentioned in every original literary dramatic musical and artistic work, if –

(a) in the case of a published work, the work was first published within such parts of His Majesty's dominions as aforesaid; and

(b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within such parts of His Majesty's dominions as afore-said;

but in no other works, except so far as the protection conferred by this Act is extended by Order in Council thereunder relating to self-governing dominions to which this Act does not extend and to foreign countries.

. . . .

(b) 25. – (1) This Act, except such of the provisions thereof as are expressly restricted to the United Kingdom, shall extend throughout His Majesty's dominions: Provided that it shall not extend to a self-governing dominion, unless declared by the Legislature of that dominion to be in force therein either without any modifications or additions, or with such modifications and additions relating exclusively to procedure and remedies, or necessary to adapt this Act to the circumstances of the dominion, as may be enacted by such Legislature."

2. *The 1956 Act:*

(a) "31. Extension of Act to . . . . . colonies . . . . .

(1) Her Majesty may by Order in Council direct that any of the provisions of this Act specified in the Order (including any enactments for the time being in force amending or substituted for those provisions) shall extend, subject to such exceptions and modifications (if any) as may be specified in the Order, to –

. . . . .

(c) any colony; . . . . "

(b) Paragraph 39 Seventh Schedule:

"(1) The provisions of this paragraph shall have effect for the construction of any reference in any provision of this Act –

(a) to countries to which that provision extends, or

(b) to qualified persons.

(2) Where, at any time after the commencement of any provisions of this Act, a provision which contains such a reference –

(a) has not yet been extended by virtue of section thirty-one to a country to which the Act of 1911 extended (or which, by virtue of that Act, was to be treated as a country to which it extended), and

(b) has not been applied in the case of that country by virtue of section thirty-two,

then, with respect to any time before the provision is so extended or applied, the reference shall be construed as if the provision did extend to that country.

(3) For the purpose of determining whether copyright subsists in any work or other subject-matter at a time when a provision containing such a reference has been extended to a country other than the United Kingdom, the reference shall be construed, in relation to past events, as if that provision had always been in operation and had always extended to that country.

(4) . . . . "

(c) Paragraph 41 Seventh Schedule:

"In so far as the Act of 1911 or any Order in Council made thereunder forms part of the law of any country other than the United Kingdom, at a time after that Act has been wholly or partly repealed in the law of the United Kingdom, it shall, so long as it forms part of the law of that country, be construed and have effect as if that Act had not been so repealed."

(d) Paragraph 41 as modified:

"In so far as the Act of 1911 or any Order in Council made thereunder forms part of the law of any country other than the United Kingdom, at a time after that Act has been wholly or partly repealed in the law of the United Kingdom or of any other country to which that Act extended or which, by virtue of that Act, was to be treated as a country to which it extended, it shall, so long as it forms part of the law of the country first mentioned, be construed and have effect as if that Act had not been so repealed."

3. The Constitution of Singapore, Article 105(1)*:

"Subject to the provisions of this Article and to any provision made on or after Malaysia Day by or under Federal law or State law, all existing laws shall continue in force on and after the coming into operation of this Constitution . . . . . but all such laws shall, subject to the provisions of this Article, be construed as from the coming into operation of this Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution and the Malaysia Act."

4. Malaysia Act 1963 (Malaysia), section 73(1):

"Subject to the following provisions of this part of this Act and to any law passed or made on or after Malaysia Day, all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed: . . . "

* See now Article 162. The Constitution, 1985 Ed.

5. Constitution and Malaysia (Singapore Amendment) Act 1965 (Malaysia), section 7:

"All present laws in force in Singapore immediately before Singapore Day shall continue to have effect according to their tenor and shall be construed as if this Act had not been passed in respect of Singapore subject however to amendment or repeal by the Legislature of Singapore."

MATTERS NOT IN DISPUTE

For the purpose of this appeal, counsel for both parties, *viz.* Mr. Walton Q.C. for the appellants, and Mr. Lightman Q.C. for the respondents, have agreed to the following propositions, except as otherwise indicated.

(1) the repeal of the 1911 Act on June 1, 1957 in the United Kingdom did not affect its operation in Singapore as part of the law of Singapore.

(2) the 1959 Extension Order when extended to Singapore had the effect of restoring the United Kingdom as a country "to which the 1911 Act extends" in section 1(1) of the 1911 Act; whether it has retrospective effect to June 1, 1957 is an issue in this appeal.

(3) The 1911 Act (read with the 1959 Extension Order) was an existing law of Singapore on Malaysia Day and on Singapore Day, subject only to such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution of Singapore and the Malaysia Act 1963 and the independent status of Singapore, first as a constituent state of Malaysia and then as a sovereign republic.

(4) The 1911 Act in Singapore on Malaysia Day was not inconsistent with the Constitution of Singapore or the Malaysia Act or repugnant to the independent status of Singapore: see the decision of the Privy Council in *Performing Right Society* v. *Bray Urban District Council*[1] the decision of the Madras High Court in *Blackwood* v. *Parasuraman*[2] rejecting in each case the contrary argument that the 1911 Act did not survive because it was repugnant to the sovereign status of the Republic of Ireland and of India, and the decision of the Federal Court of Malaysia (on appeal from the High Court in Singapore) in *Public Prosecutor* v. *Anthony Wee Boon Chye*[3] rejecting a similar contrary argument against the survival of another imperial statute, the Fugitive Offenders Act 1881 ("the 1881 Act") in post independent Singapore.

(5) The meaning and effect of section 1(1) of the 1911 Act read with the 1959 Extension Order on Malaysia Day has not been affected by any subsequent constitutional development or constitutional enactment leading to Singapore becoming, on Singapore Day, an independent and sovereign republic independent of Malaysia.

THE MAIN DECISION

The main decision turned on the meaning of the following (italicized) expression in section 1(1) of the 1911 Act:

". . . . copyright shall subsist throughout *parts of His Majesty's dominions to which this Act extends* . . . . . "

which, for convenience, we shall hereafter refer as "the crucial expression". We would observe that although Singapore inherited the 1911 Act, word for word, as part of its laws, no submission was made by Mr. Walton that the 1911 Act was, by its terms, intended to extend only to territories having the status of British dominions, and that after Singapore ceased to be a British dominion, the said Act should be construed as excepted from existing laws in order to bring existing laws into conformity with the new constitutional arrangements, with the result that there is no copyright law in Singapore. We would further observe that a similar argument in relation to the survival of the 1881 Act in Singapore on Malaysia Day was rejected by all judges of the Federal Court in the *Wee Boon Chye* case.

APPELLANT'S CASE

Mr. Walton's proposition is that, as a consequence of Singapore becoming an independent state, the crucial expression underwent a transformation to refer only to "Singapore". The proposition is structured along the following lines:

(a) The 1911 Act was extended to Singapore as a subject territory by the sovereign power of the United Kingdom as the dominant state; it derived its force from the sovereign power of the United Kingdom;

(b) On Malaysia Day, the 1911 Act became a Singapore Act and thereby derived its force from the sovereign power of Singapore. It was therefore a totally different law from that contemplated by the former imperial power. In any case, even before Malaysia Day, Singapore never at the outset had the same copyright law as the United Kingdom because only parts of

the 1911 Act were applicable to Singapore and furthermore the 1911 Act was modified by Ordinance No. 18 of 1914 (Cap. 187);

(c) The 1911 Act therefore requires re-interpretation to reflect this constitutional change in the status of Singapore and also because some of its applicable provisions contain expressions *e.g.* "Imperial Copyright", "foreign countries in sections 1, 19(7) and 23, "Board of Trade" in sections 3 and 19, "the Crown" in section 18, *etc.* which may have taken on a different meaning or complexion;

(d) As it is a rule of construction that the parliamentary history of a statute cannot be referred to in interpreting its provisions, the court in interpreting the 1911 Act, should start from the basis that it is a Singapore Act and not for any purpose consider that, historically speaking, if the 1911 Act had never been passed by the United Kingdom Parliament, it would not now be part of the law of Singapore.

(e) Notwithstanding (d), it is germane to the exercise of re-interpretation to consider what the orignal interpretation of the 1911 Act intended by the United Kingdom was, so that the common sense interpretation now to be put upon the 1911 Act by Singapore is no more than what the United Kingdom originally intended. On this approach, it is clear that (i) the crucial expression was never intended to constitute a closed class of countries and there was never in fact a closed class, and (ii) by "extends," the Act did not mean "geographical areas in which the law happens to be the same (because the law is not the same) but "parts of the world where this Act has been and continues to be imposed upon the peoples thereof by virtue of the sovereign and imperial power of the United Kingdom." Therefore, if the courts of Singapore were to adhere to its original intention in re-interpreting the crucial expression, then, (i) the expression "this Act" means "this Singaporean Act", and (ii) the expression "extends" means extended by the sovereign power of Singapore and not that of the United Kingdom; thus the 1911 Act can only extend to or be extended to Singapore itself as Singapore has no power to extend its laws to any other country nor has Singapore an empire to which it can extend the 1911 Act.

(f) The re-interpretation advanced in paragraph (e) is not inconsistent with the doctrine of vested rights, as there is no vested right in the ownership of copyright and the doctrine operates only upon a repeal of the law and the 1911 Act has not been repealed.

RESPONDENTS' CASE

Mr. Lightman's contention is that the word "extends" refers to all those countries which (including those which have since 1911 become independent) once constituted parts of His Majesty's dominions to which the 1911 Act extended and in which the 1911 Act has not been repealed. His arguments are as follows:

(1) Prior to Malaysia Day, works first published in England were entitled to copyright protection in Singapore because the 1911 Act (although repealed in the United Kingdom by the 1956 Act) continued to extend to the United Kingdom by virtue of the 1959 Extension Order.

(2) After Malaysia Day, the 1911 Act continues in force with the same effect on Singapore for the following reasons:

(a) There is a presumption that constitutional changes do not effect changes in private civil law: see the *Blackwood* case paragraphs 23-24, *ibid.*

(b) There is a presumption that legislation does not interfere with, or deprive, private individuals of vested rights, and copyright is such a right: see the *Bray* case at pages 400-1, *ibid.*

(c) The various enactments effecting independence expressly provide that existing laws (which include the Copyright Act 1911) all continue in force and shall be construed as if the changes have not been effected.

(3) Mr. Walton's submission that the 1911 Act should be construed as an Act passed by Singapore on Malaysia Day is bad for the following reasons:

(a) The 1911 Act is continued as part of the law of Singapore by the statutes effecting independence.

(b) The mere fact of independence is no ground for adopting a different construction, and indeed if such a construction is adopted, far from the existing laws being continued, a new law is created.

(c) The approach is inconsistent with the principles and statutory provisions referred to above. Far from the construction of the 1911 Act after independence being at large, the constitutional provisions provide a statutory framework against which the 1911 Act must be construed and this is inconsistent with the above approach.

(d) The approach is inconsistent with the *Blackwood* case where the Court recognised that copyright originating under the 1911 Act by publication in England was a chose in action enforceable in India.

(4) As regards the expression "His Majesty's dominions," in any case in which a plaintiff seeks protection in Singapore of a work first published outside Singapore, the Court must determine the following questions:

(a) Whether the place of the first publication is or has been part of His Majesty's Dominions or a protectorate to which the 1911 Act has been extended under section 28, as to which the necessary evidence will ordinarily come from the British Foreign Office;

(b) whether the 1911 Act has been repealed in that country, as to which expert evidence may be required.

(5) As regards the expression "extends", it means a country where by reason of its enactment by the imperial legislature, the 1911 Act (other than the provisions restricted to the United Kingdom) forms part of the law, albeit the Act may be supplemented by parochial legislation.

THEAN J.'S INTERPRETATION

How did Thean J. interpret the crucial expression? His Lordship construed the words "parts of His Majesty's dominions" occurring in the crucial expression as a geographical expression identifying all countries geographically falling within those words. The relevant part of his judgment reads as follows ([1985] 1 M.L.J. 196, 201, 202):

"This point in principle had been determined in 1964 by the majority decision of the Federal Court of Malaysia in *Public Prosecutor* v. *Anthony Wee Boon Chye & Anor.* [1965] 1 M.L.J. 189. In that case a warrant was issued by a magistrate in Hong Kong for the arrest of Anthony Wee Boon Chye and Agnes Wee ('accused') on a charge of committing an offence under section 9(a) of the Forgery Ordinance of Hong Kong. The accused were in Singapore at that time and the police in Hong Kong forwarded the warrant to the police in Singapore who then arrested the accused and brought them before a district judge with a view to the warrant being endorsed and order made for the repatriation of the accused to Hong Kong under Part II of the Fugitive Offenders Act, 1881 of the United Kingdom ('the 1881 Act'). The learned district judge refused to endorse the warrant on the ground that the provisions of Part II of the 1881 Act were no longer in force in Singapore as Singapore had become part of the sovereign Federation of Malaysia. In so doing the learned district judge was following the decision of the Supreme Court of India in the case of *State of Madras* v. *Menon* A.I.R. 1954 S.C. 517. Against the decision of the learned district judge the Public Prosecutor appealed to the High Court and upon the appeal coming on for hearing the High Court considered that a constitutional question was involved and stated a special case for the opinion of the Federal Court under section 48 of the Judicature Act then in force. The Federal Court held that the provisions of Part II of the 1881 Act as applied to British possession by the Order in Council made on January 2, 1918 ('Singapore-Hong Kong Order') were still part of the law of Singapore notwithstanding the incorporation of Singapore in the Federation of Malaysia. In arriving at this conclusion Thomson L P held that as at September 15, 1963, the last day on which Singapore was part of the British possession and the day before it became part of the Federation of Malaysia, the provisions of Part II of the 1881 Act and the Singapore-Hong Kong Order were part of the law of Singapore and by virtue of Article 105 they continued in force and their existence was further perpetuated by section 73 of the Malaysia Act of Federation of Malaya, and that as a matter of construction the term 'British possession' was to be construed as a geographical expression.

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Barakbah, C.J. (Malaya) concurred with what Thomson, L.P. said. Wylie C.J. (Borneo) for different reasons also came to the same conclusion that Part II of the 1881 Act still applied to Singapore.

Though the decision in that case relates to a construction of a different statute, namely the 1881 Act, I find that I am bound to follow the principles adopted by the majority of the Federal Court in construing the 1881 Act. In a similar way the 1911 Act read with Paragraph 41 is to be construed 'drained of any content implying any political relationship between the United Kingdom and Singapore' and so far as concerned 'the parts of His Majesty's dominions' to which the 1911 Act extends it is to be treated as a geographical expression: the geographical areas which fall within 'the parts of His Majesty's dominions' to which the 1911 Act extends. In other words, the term 'the parts of His Majesty's dominions' to which the 1911 Act extends is to be construed as an area embracing all countries geographically falling within those parts of the British dominions. Such a construction is not inconsistent or in conflict with the Constitution of Malaysia or the sovereign status of Malaysia. Nor following the test propounded by Thomson L.P. is it repugnant to any provisions of the Constitution. Therefore, as at September 16, 1963, the 1911 Act continued in force as part of the law of Singapore and in so far as the instant case is concerned, works first published in the United kingdom continued to enjoy copyright protection under the 1911 Act."

It is to be noted that Thean J. did not find it necessary to determine the meaning of the expressions "this Act" and "extends" or to decide on the issue of vested rights.

ADDITIONAL GROUNDS ON APPEAL

In this appeal, Mr. Walton has contended that the main decision is wrong on the following additional grounds:

(1) that the Federal Court of Malaysia in the *Wee Boon Chye* case did not lay down a principle of interpretation, but that if it did, the principle is not binding on Thean J. as (a) the Federal Court is no longer part of the hierarchy of court of Singapore and (b) it is not permissible to interpret the 1911 Act by reference to an interpretation of the 1881 Act which was a different statute and of a different character and (c) the expression "British Possession" in the 1881 Act was defined by the Singapore-Hong Kong Order in Council, whereas the crucial expression in the 1911 Act has not been defined in any way;

(2) Thean J 's interpretation implies that the crucial expression describes a closed and unvarying class of geographical areas and this is inconsistent with the single period decision which is predicated upon the expression as referring to an open and varying class;

(3) Thean J.'s interpretation raises problems of when the geographical areas of His Majesty's dominions should be determined and if no point of time can be fixed other than the date on which copyright is claimed to have accrued, then the class is necessarily a varying class and the geographical areas thereof necessarily uncertain;

(4) Thean J.'s construction does not get over the changed meanings of the expressions "this Act" and "extends" in the 1911 Act upon Singapore becoming a sovereign and independent state;

(5) the main decision creates or cannot resolve the problems of reciprocal rights recognised by Thean J. which would be resolved by accepting Mr. Walton's contention;

(6) Thean J.'s construction is question begging because one must first adopt a political approach in order to determine what are the countries that come within the expression before one can delineate their geographical areas.

Mr. Lightman's additional argument is that the *Wee Boon Chye* case has established a principle of construction applicable to all imperial legislation that is still part of the law of Singapore. He states it thus: "that where imperial legislation is made applicable to parts of His Majesty's dominions and that part is identifiable specifically by some formula used therein, then upon that part attaining independence from the imperial power, full effect must be given to the legislation and the references to those parts must be treated as geographical references thereto". He accordingly submitted that Thean J. was bound by or otherwise correct in applying that principle to the construction of the crucial expression in the 1911 Act.

THE WEE BOON CHYE CASE

In *Wee Boon Chye* case, Thomson L.P. in delivering the majority judgment of the Federal Court treated the expression "British Possession" occurring in sections 13 to 19 of the 1881 Act as nothing more than a geographical expression drained of any political content for the following reasons:

(a) sections 13 to 19 of the 1881 Act was applied in 1918 to Singapore by the Singapore-Hong Kong Order in Council which specified a list of countries to which those sections were applied; the list included Singapore and Hong Kong.

(b) sections 13 to 19 read with the Order in Council were part of the law of Singapore immediately preceding its independence.

(c) on Malaysia Day, they were an "existing law" in terms of Article 105(1) of the Constitution of Singapore subject only to such modifications as are required by that Article.

(d) sections 13 to 19 of the 1881 Act, although part of the law of Singapore, could not apply to Singapore because they refer in terms to a "British Possession," which Singapore was not on Malaysia Day, unless the expression could be interpreted to bring those sections into conformity with the Constitution of Singapore and the sovereign status of Singapore.

(e) the Order in Council by applying those sections to the territories specified therein by name (including Singapore and Hong Kong) had the effect of substituting those countries for that expression, so that on Malaysia Day, that expression was referrable to those countries by name, drained of any political content implying any political relationship between the

United Kingdom and Singapore so far as concerned Singapore; the expression was therefore no longer a political but a geographical expression.

(f) so construed, sections 13 to 19 of the 1881 Act were in conformity with and did not conflict either with the Constitution of Singapore or the sovereign status of Malaysia (and Singapore as a constituent state).

Now, whether or not the Federal Court has laid down a principle of construction applicable to the expression "British Possession" or some suchlike formula in other imperial legislation, we agree with Mr. Walton that the doctrine of *stare decisis* does not compel Thean J. to accept the interpretation in the *Wee Boon Chye* case as binding on him as it concerned a different statute, and a different expression which, arguably required no interpretation because its content had been filled in, so to speak, by the Order in Council. It would appear to us that Thomson L.P. when observing that the expression "British Possession" in the 1881 Act was a geographical expression was saying no more than that once the political content had been taken out of it or substituted by the territories specified in the Singapore Hong Kong Order in Council, it could not be anything other than a geographical expression. But, notwithstanding that the expression "Her Majesty's dominions, has not been defined in the 1911 Act or identified by an Order in Council as in the case of the 1881 Act, was Thean J. wrong in interpreting it as a geographical expression in order to bring the 1911 Act into conformity with the sovereign status of Singapore?

THE BRAY CASE

Mr. Walton says "Yes." He contends that there is another way and that is to interpret the crucial expression to refer to Singapore so that section 1(1) of the 1911 Act would read: ". . . . . copyright shall subsist throughout [in] Singapore . . . . for the term . . . . ." This interpretation is seductive in its simplicity and its appeal to nationalistic sentiments. But it is by no means a novel interpretation. It was canvassed before and considered by the Privy Council in the *Bray* case where the appellants had sued the respondents for infringement of their rights under the 1911 Act in two musical works, first published in Germany in 1897 and 1921 respectively but the rights in which were acquired by them in 1922 and 1925 respectively. These works had copyright protection on first publication in Germany by reason of an Order in Council No. 913 of 1912 which was made under section 29 of the 1911 Act. The said Order in Council, by its terms applied to all His Majesty's dominions, colonies and possessions except the self governing dominions. Ireland became independent in 1922. Article 73 of the Irish Free State Constitution Act, 1922 provided that:

"Subject to this Constitution and to the extent to which they are not inconsistent therewith, the laws in force in the Irish Free State (Saorstat Eireann) at the date of the coming into operation of this Constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas."

The Parliament of the Irish Free State by the Industrial and Commercial Property (Protection) Act 1927 repealed the 1911 Act retrospectively but preserved all rights accrued under the 1911 Act. One of the arguments put forward by counsel for the respondents was that only such part of the 1911 Act as protected persons who were citizens of or resident in the Irish Free State, or works first published in the Irish Free State "came over" to and was in force in the republic on independence force. The Privy Council rejected this argument on the ground that there was no trace of any such idea to be found from first to the last in any documents, whether Act, treaty or constitution, and no facts and no reasons were given to support it. Their Lordships held that Article 73 continued the 1911 Act in full force and effect and not merely in an amended or modified form and that the said Act was not inconsistent with the constitution.

Mr. Walton has submitted that since there was no issue in the *Bray* case as to the meaning of the crucial expression in the 1911 Act in its application to the Irish Free State, the decision of the Privy Council is not relevant to the present case.

In our view, the Privy Council has, in the *Bray* case, laid down a principle that the independence of a former British dominion does not, by itself, affect existing or vested rights in copyright acquired under the 1911 Act prior to independence. As there is no material difference in the facts and the relevant constitutional provisions of the two territories *i.e.* between Article 73 of the Constitution of the Irish Free State and Article 105(1) of the Constitution of Singapore, at the times of their respective independence, the decision of the Privy Council, if it is not binding on this court, is of the greatest persuasive authority in relation to whether the said works comprised in the first period *i.e.* works published in England before Malaysia Day continue to be protected in Singapore on Malaysia

Day. The Privy Council judgment is also material to the present case in so far as it rejected the argument that the 1911 Act was an existing law with partial effect in the Irish Free State to protect only works first published in or by citizens of or residents in the Irish Free State.

MEANING OF "THIS ACT"

We now consider Mr. Walton's submission on the post independent meaning of the crucial expression. His interpretation rests on two main foundations, each of which reinforces the other: (1) on Malaysia Day the expression "this Act" in section 1(1) of the 1911 Act should be interpreted as "this Singapore Act" (*i.e.* "this Act of the Parliament of Singapore") on the ground that it is common sense and that the Interpretation Act demands it; and (2) the word "extends" should be interpreted as "extends by the imperial power of Singapore" on the ground that was the sense in which it was used when the United Kingdom first extended the law to its dominions.

In our view, the expression "this Act" does not and cannot be transformed on Malaysia Day to mean "this Act of the Parliament of Singapore." It meant and continues to mean "this 1911 Act" which is continued by the Constitution of Singapore as part of the law of Singapore. The 1911 Act was never passed by the Parliament of Singapore or adopted as its Act at any time. It was an Act of the United Kingdom Parliament that was extended to Singapore by its own terms and came into force in Singapore by proclamation of the Governor when it was a British colony. It was continued as part of the law of Singapore by Her Majesty's Order in Council (*i.e.* S.I. No. 1495 of 1963) which granted to Singapore the Constitution of Singapore as part of the constitutional arrangements. We know of no principle or authority which supports the view that the attainment of independence of a territory, which is a historical fact, *ipso facto*, changes the legislative source of its inherited laws, which is another historical fact.

The argument that the Interpretation Act (Cap. 3) demands Mr. Walton's interpretation is also without substance. Section 2(1) of the Interpretation Act provides as follows:

"In this Act, and in every written law enacted before or after the commencement of this Act, the following words and expressions shall, without prejudice to anything done prior to the coming into operation of this Act, have the meanings respectively assigned to them *unless there is something in the subject or context inconsistent with such construction* or unless it is therein otherwise expressly provided:–

'Act' or 'Act of Parliament' means an Act of the Parliament of Singapore and includes any Ordinance or Act of Singapore or Malaysia having the force of law in Singapore; and the expression 'the Act' when used in any subsidiary legislation means the Act under the authority of which such subsidiary legislation was made".

(Emphasis ours).

It should be noted the word that is defined in section 2 is "Act" and not the expression "this Act." Furthermore, the meaning of "Act" as defined is not expressed in absolute terms but is subject to its context or the subject matter. The subject matter or context of the 1911 Act is clearly inconsistent with the expression "this Act" therein having the meaning of an Act of the Parliament of Singapore. To interpret "this Act" as an Act of the Parliament of Singapore is, as Mr. Lightman submitted, to create a new law and not to continue an existing law.

In this connection, we might add that the Second Charter of Justice 1826 introduced into Singapore (when it was part of the Straits Settlements) the law of England as it stood in 1826 including all English statutes of general application, subject only to local circumstances. We do not think that any of these statutes can properly be described as Acts of Parliament of Singapore by virtue of the fact that the word "Act" appears in any such statute, whether in its title or its provisions. In principle, there is no reason why a foreign law or statute cannot exist as part of the laws of Singapore except as an Act of the Parliament of Singapore.

MEANING OF "EXTENDS"

If the expression "this Act" does not mean "this Act of the Parliament of Singapore," then Mr. Walton's argument on the meaning of the word "extends" also fails and the whole edifice of his contention falls to the ground. In any case, we think that this argument, standing on its own, has no merit. In our view, the said expression in section 1(1) has no connotation nor does it imply the notion of an extension by sovereign power for the following reasons. First, the word "extends" in the crucial expression merely defines the territories to which the Act has been or would be extended from time to time; the said expression in section 1(1) has no operative effect in extending the 1911 Act. This is done by section 25 which extended it

to all His Majesty's dominions except self-governing dominions which had the privilege of being able to decide whether or not they would extend the Act to themselves. Secondly, this is reinforced by the use of the expression "is extended" in relation to foreign countries in section 1(1) itself. It cannot be suggested that the protection conferred by the 1911 Act could be extended to foreign countries by the exercise of the imperial force of the United Kingdom even in 1911. Thirdly, we are of the view that to say that the 1911 Act was imposed on Singapore by the sovereign power of the United Kingdom is merely to make a political statement as to the relationship between Singapore and the United Kingdom. It is not a legal proposition and has no significance or effect on the proper construction of the crucial expression. Fourthly, to the extent that (a) there is any legal significance in the statement that the 1911 Act was extended to Singapore by imperial force and (b) there is a principle of construction which permits a court to interpret the word "extends" in section 1(1) to mean "extended by imperial force of the United Kingdom", the said expression would also have been drained of any political content implying any such significance upon Singapore becoming an independent nation. There is neither fact nor reason to suggest the there is a transfer of the political content of the said expression to Singapore in its new constitutional status vis-a-vis its relationship to those territories to which the 1911 Act has been extended.

MEANING OF "CRUCIAL EXPRESSION"

The 1911 Act was passed by the United Kingdom to provide, *inter alia*, a framework for the reciprocal grant of copyright amongst its dominions in works originating within such dominions. Section 1(1) gave effect to this intention.

In our view, the crucial expression was intended to (a) include within its ambit not only all British dominions which existed on the date of coming into force of the 1911 Act, including those self governing dominions which have extended the 1911 Act to themselves, but also all such dominions thereafter (for it should be remembered that in 1911 Great Britain was still in its majestic ascendency as an imperial power) and to exclude therefrom all those dominions (*e.g.* the self governing dominions) which should refuse to extend the Act to themselves (in the manner provided for in the said Act) or which have repealed the Act after it has been extended to them (so that it would *not* be "a part of His Majesty's dominions to which this Act extends"). The class of territories to which the Act could extend was then an open and variable class. However, the effect of the repeal on June 1, 1957 by the United Kingdom was to close the class of territories to which the 1911 Act could be further extended by its own terms or by Orders in Council to the class to which it then currently extended. This class ironically did not include the United Kingdom itself as the 1911 Act, having been repealed, no longer extended to it. Although in reality, the class was closed, the United Kingdom Parliament could, in legal theory, have revived the 1911 Act in the same terms and deemed it to be the same 1911 Act that had been repealed and any new British possessions which had come or coming into existence since the repeal would also be a territory to "which this Act extends." For these reasons, we agree with Mr. Walton's argument that the crucial expression originally signified and even after its repeal could signify an open and varying class in its application in Singapore. Indeed, this must be so because on January 26, 1959, the United Kingdom was, as conceded by counsel, restored to the class of territories "to which the 1911 Act extends" by the deeming effect of the 1959 Extension Order.

This meaning of the crucial expression subsisted in Singapore on the day immediately preceding Malaysia Day and was carried over on Malaysia Day subject to such modifications or adaptations necessary to bring the 1911 Act into conformity with the Constitution of Singapore or the sovereign status of Singapore. Subject to this, the meaning of the crucial expression remained the same. However, because the United Kingdom ceased to have power on Malaysia Day to legislate for Singapore, it could no longer revive the 1911 Act nor designate any more dominions to which the 1911 Act could be extended. As a result of this, the class of territories to which the 1911 Act extended closed forever on Malaysia Day, so far as concerns Singapore.

It follows from the above analysis that the number of territories to which the 1911 Act extended changed during various periods of time. The first period was from July 1, 1912 to June 1, 1957 (*i.e.* the commencement and the repeal of the said Act in the United Kingdom). The second period was from June 1, 1957 to January 26, 1959 when the United Kingdom was itself not a territory to which the 1911 Act extended. The third period was from January 26, 1959 to September 16, 1963 (*i.e.* the date when the 1959 Extension Order was applied to Singapore to the day immediately preceding Malaysia Day). We are unable to see any

difficulty in verifying the identities of these territories to which the 1911 Act extended during these three periods as documentary evidence is available from the British Foreign Office in London. The expression "His Majesty's dominions" as it occurs in the 1911 Act would, during these periods, be referable to these territories. In this respect, it is not incorrect to say that the said expression has become a mere geographical expression, drained of any political content, so far as concerned Singapore when Singapore become independent. The problem referred to by Mr. Walton in connection with the changing boundaries of such territories is not, in our view, a consideration which affects or should affect the proper construction as to the meaning of the said expression or the crucial expression.

For the above reasons, we are of the view that there is no inconsistency between Thean J.'s main decision and his single period decision. Both decisions are consistent with the meaning of section 1(1) of the 1911 Act in its application to Singapore during the relevant periods from its enactment to its repeal in the United Kingdom to the attainment of independence of Singapore.

Mr. Walton's submissions on the crucial expression require the courts in Singapore to give no effect whatever to the second part of section 1(1) of the 1911 Act in relation to foreign works to which the said Act had been extended by the United Kingdom prior to Malaysia Day. Such works that had acquired copyright prior to Malaysia Day would also lose such rights on Malaysia Day. The function of the court is to interpret the meaning of the words in section 1(1) in accordance with established principles of construction. The primary purpose of interpretation is to give effect to the intention of the legislature as expressed in the words of the statute. The constitutional enactments providing for Singapore's independence make it clear that all existing laws prior to Malaysia Day shall subsist on and after Malaysia Day, subject only to such modifications as are required to make them conform to the Constitution of Singapore. Accordingly, we are unable to accept the theory of interpretation so forcibly propounded by Mr. Walton. Neither authority nor principle justifies the acceptance of this theory.

We have earlier referred to the *Bray* case in which the Privy Council held that copyright acquired in respect of foreign works continued to subsist in the Irish Free State and that this decision would be of the greatest persuasive authority in our courts on the same issue: see *de Lasala* v. *de Lasala*.[4] The circumstance that the arguments now made to us by Mr. Walton were not made to the Privy Council would make no difference to the authority of the *Bray* case, even if it could be demonstrated that such arguments would have persuaded the Privy Council to have decided otherwise. That being the case, it would be exceedingly odd that copyright in foreign countries should subsist but that copyright originating from any or a former part of His Majesty's dominions should not continue to subsist in the law of a former part of His Majesty's dominions upon its attaining independence.

PROBLEM OF RECIPROCITY

We also find the argument on the problem of reciprocal rights irrelevant. If there is a problem, it is one for the Singapore Parliament to resolve by legislation. It is not a matter for the courts to settle (see Thomson L.P.'s remarks in the *Wee Boon Chye* case at page 194). In any case, we would like to make some observations on this issue. The 1911 Act gave effect to a scheme of mutual recognition of copyright within the territories of the former British Empire all of which had a common system of law based on the common law of England. If our interpretation of the crucial expression is correct, then another court in another territory to which the 1911 Act extends is likely to render the same interpretation. On this basis, works first published in all British possessions and self governing dominions to which the 1911 Act still extends will continue to enjoy copyright in Singapore and any of those territories so long as the 1911 Act remains as part of the law of Singapore and those territories. It is true that these territories will cease to grant reciprocal rights to works first published in Singapore by repealing the 1911 Act as part of their law, as many have done. But conversely, Singapore may also repeal the 1911 Act, which in fact it has taken steps to do by the Copyright Act No. 2 of 1987, which is due to come into force very soon. Therefore, whilst it may be that Singapore might have been worse off *vis-a-vis* some of these territories, it might also have been better off *vis-a-vis* other of these territories.

THE DOCTRINE OF VESTED RIGHTS

We turn now to the doctrine of vested rights which also stands in the way of Mr. Walton's interpretation. He says the doctrine does not apply because there is no vested right in the ownership of copyright as works can go in and out of copyright.

Laddie, Prescott & Vitoria: The Modern Law of Copyright (pages 179 - 180), and that what the respondents have here is merely the right to recover damages for infringement of copyright for the period before Malaysia Day.

In the case of *Bray*, Johnston J. (whose decision was restored by the Privy Council after it was reversed by the Supreme Court) had this to say in dealing with the argument on the subsistence of private property rights ([1928] I.R. 506 at page 511):

"It is now argued that this valuable property which the plaintiffs or their assignees enjoyed previously to the recent Governmental changes, was swept clean out of existence by some malign magic in the Treaty or the Constitution. If this great Constitutional change, which hitherto has been supposed to have affected public rights and national status only, is to be regarded as having interfered with private rights of property, whether real or personal, whether based on the common or the statute law, and whether owned by persons residing inside or outside this area the matter becomes one of serious import, affecting not only the persons primarily concerned, but also citizens of the Free State itself who may have acquired sub interests in the property in question by way of mortgage, lien, assignment, or trust.

It was more or less assumed during the course of the argument that the onus lay upon the plaintiffs to show that their rights had been preserved by one or other clause of the Constitution. It seems to me, on the contrary, that the onus is on the defendants to show that the plaintiffs' copyright in these musical pieces has been confiscated or extinguished, expressly or by necessary implication as a result of these political changes. I have not been referred to and I have myself failed to find any article of the Treaty or the Constitution which brought about any such result. I cannot believe that this great constitutional change brought with it or was intended to bring with it, a juristic vacuum in any department of national activity. On the contrary it is plain beyond controversy that the Constitution is based upon the assumption of the existence in the Free State of a fully developed body of law, regulating all rights and duties within that territory."

It should also be noted that in the *Bray* case, the plaintiff was suing as assignee of the copyrighted works. Likewise, in *Blackwood*, the relevant works were first published in England, and the assignees of the ownership in such copyright were suing in India. In both decisions, the Courts upheld the doctrine of vested rights.

We have already stated this argument in so far as it relates to the first period is inconsistent with the Privy Council decision in the *Bray* case. In so far as it relates to the other four periods in the main decision, we have held that the 1911 Act continued to operate in Singapore in the same condition and to the same effect before and after Malaysia Day. Mr. Walton's second argument against the application of the doctrine is that it only operates when the law is repealed but not, as this case, where the 1911 Act has not been repealed but merely continued. We accept this statement of principle, but we do not accept the manner in which the statement is being applied. On the one hand, Mr. Walton asserts that the 1911 Act has not been repealed; on the other, he is contending for an interpretation thereof which has the effect of repealing it. In our view, Mr. Walton has found no answer to the doctrine of vested rights, nor is there one, in this case. Mr. Walton has recognised the position that if works first published in the United Kingdom on the day immediately preceding are held by this court to continue to subsist in Singapore on Malaysia Day, he would have no basis for suggesting that works published in the United Kingdom on Malaysia Day itself and after are not protected under the same law.

CONSTITUTIONAL PROTECTION OF PROPERTY

In the context of this case, it may also be pertinent to note that on Malaysia Day, the Federal Constitution became applicable to Singapore. Amongst the various fundamental rights provided by the Constitution is one to property in Article 13(1) which provides that:

"No person shall be deprived of property save in accordance with law."

The expression "law" in that Article includes the written law, the common law and any judgment or order of any court or tribunal in Malaysia lawfully made in the exercise of any jurisdiction or power conferred on it. If Mr. Walton's interpretation is correct, any owner of copyright, (including a Singaporean owner by assignment or devolution) in works first published in England, would have had his property in such works abrogated for the remainder of their copyright term. This amounts to deprivation of property. No written law to such effect was in force in Malaysia on Malaysia Day. We are asked to construe the crucial expression in such a way as to effect such a deprivation. We are anxious not to walk the path of unconstitutionality. For a court to do otherwise is nothing more or less than to modify the 1911 Act to conform to Article 13(1) of the Constitution of Malaysia.

THE SINGLE PERIOD DECISION

Thean J. held that during the period June 1, 1957 to January 26, 1959, the 1911 Act by its

terms no longer extended to the United Kingdom as the Act had been repealed in the United Kingdom by the 1956 Act. It was only when the 1959 Extension Order was extended to Singapore that the United Kingdom once again became one of His Majesty's dominions to which the 1911 Act then extended. Mr. Lightman, for the respondents, submitted that Thean J. misconstrued and/or misunderstood the Seventh Schedule of the 1956 Act as Paragraphs 39(1), (2) and (3) applied to the construction of Paragraph 41 and made it retrospective to June 1, 1957 the date when the 1956 Act came into effect. It was argued that Paragraph 39 operates irrespective of any extension of any provision by any Order in Council, and of its terms and force extended to all countries to which the 1911 Act has been extended, that Paragraph 39 is integral with 41, being the statutory guide to the construction of Paragraph 41, and that a definition or construction clause must be implicitly incorporated in any extension of the substantive provision. We do not accept this argument. Paragraph 39 has never been extended to Singapore, and therefore never operated in Singapore. We agree with Thean J. that the extension of Paragraph 41 to Singapore did not automatically bring with it the operation of Paragraph 39. Sub-Paragraphs (2) and (3) of Paragraph 39 have the effect (in the law of the United Kingdom) of deeming the extension of a provision of the 1956 Act (*e.g.* Paragraph 41) to certain countries (*e.g.* Singapore) at a time when it is not so extended. Paragraph 39 therefore has the effect of preserving the operation of the 1911 Act at a certain point of time. In *Copyright Owners Reproduction Society Ltd.* v. *E.M.I.*,[5] Menzies J. at page 625 said that Paragraph 41 was intended to preserve the operation of the 1911 Act and therefore was more than an interpretation provision. We do not see any distinction between the intent of Paragraph 39(2) and (3) and that of modified Paragraph 41 except in point of time of their operational effect. If it was intended that Paragraph 41 should have retrospective effect, the 1959 Extension Order would have extended Paragraph 39(3) as well. Accordingly, we dismiss the plaintiffs' appeal on this decision.

STARE DECISIS

When submitting that Thean J. was wrong to have decided that he was bound by the principle of construction laid down in the *Wee Boon Chye* case, Mr. Walton also submitted that decisions of the Federal Court of Malaysia sitting in appeals from the High Court in Singapore are not binding on this Court on the ground that the Federal Court is no longer within the same system of courts in Singapore. We do not agree with this submission. In our view, the Court is bound by the decisions of the Federal Court sitting in appeals from the High Court of Singapore in the same way and to the same extent that it is bound by the decisions of the Court of Appeal of the Straits Settlements and for the same reason that the Court of Appeal in England is bound by the decisions of the former Exchequer Chamber: *Maine and New Brunswick Electrical Power Co* v. *Hart.*[6]

DECISION OF THIS COURT

For the reasons given above, we agree with Thean J. on both the main decision and the single period decision. The appeal and the cross appeal are both dismissed.

Appeal and cross appeal dismissed.

Solicitors: *Wee Swee Teow & Co; Allen & Gledhill.*

AUSTRALIAN SHIPBUILDING INDUSTRIES (W.A.) PTY. LTD. v. ASSETS ABLE PTE. LTD. & ANOR.

[O.C.J. (Thean J.) November 27, 1986]
[Singapore – Motion in Suit No. 4756 of 1986]

Copyright – Drawings and plans – Protection of – Claim for copyright in Specifications and Drawings first published in Australia in 1981 – Repeal of Copyright Act 1911 – Effect on work emanating from Australia after April 30, 1969 – Whether Specifications and Drawings have copyright in Singapore – Copyright Act (U.K.) 1911 – Copyright Act 1912 (Australia) – Copyright Act 1968 (Australia) – Copyright Act, 1956 (U.K.), s.31 – Copyright Act, 1956 (Transitional Extension) Order, 1959.

The plaintiff was an Australian company which carried on the business of, among other things, shipbuilding. They claimed copyright in certain Specifications and Drawings of certain vessels by reason of their first publication in Australia in 1981 or thereabout. By a Notice of Motion dated August 29, 1986, the plaintiff applied for, *inter alia*, (i) an interim injunction restraining the defendants and each of them until after the trial of this action or until further order, whether by their officers, servants or agents or otherwise howsoever, from infringing and/or causing, enabling or assisting others to infringe the plaintiff's copy-